

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SISKIYOU COUNTY EMPLOYEES  
ASSOCIATION/AFSCME LOCAL 3899,

Charging Party,

v.

COUNTY OF SISKIYOU,

Respondent.

Case No. SA-CE-255-M

PERB Decision No. 1894-M

March 27, 2007

Appearances: Anderson, Bradley & Krant by Carolyn A. Anderson, Attorney, for Siskiyou County Employees Association/AFSCME Local 3899; Liebert Cassidy Whitmore by Jeffrey C. Freedman and Adrianna E. Guzman, Attorneys, for County of Siskiyou.

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Siskiyou County Employees' Association/AFSCME Local 3899 (SCEA) to a proposed decision of a PERB administrative law judge (ALJ). In the proposed decision, the ALJ found that SCEA had failed to establish that the County of Siskiyou (County) made a unilateral change in its layoff policy when it failed to lay off extra-help employees before laying off permanent employees. The ALJ thereupon dismissed the complaint and the underlying unfair practice charge.

The Board has reviewed the entire record in this matter, including the ALJ's proposed decision, SCEA's exceptions and the County's response. As discussed in the decision below, the Board agrees that SCEA has failed to establish a unilateral change in policy or practice, and

on that basis, dismisses the complaint. The Board concurs with the result of the proposed decision, but based on its own rationale.<sup>1</sup>

### PROCEDURAL HISTORY

This action commenced on July 30, 2004, when SCEA filed an unfair practice charge against the County. The Office of the General Counsel of the Board followed on September 14, 2004, by issuing a complaint against the County. The complaint alleged that the County engaged in a unilateral change as described in the charge, in violation of sections 3503, 3505 and 3506 of the Meyers-Milias-Brown Act (MMBA)<sup>2</sup> and PERB Regulation 32603(a), (b) and (c).<sup>3</sup> The matter was not settled at the conclusion of an informal conference on November 8, 2004.

A hearing into these allegations was conducted before the ALJ on February 7 and 8, 2005, at the PERB office in Sacramento. With the filing of post-hearing briefs, the matter was submitted for decision on March 28, 2005. The ALJ issued the proposed decision on August 26, 2005, dismissing the complaint and the underlying unfair practice charge.

### FINDINGS OF FACT

The County is a "public agency" within the meaning of MMBA section 3501(c). SCEA is an employee organization as defined in Section 3501(a). At all times relevant, SCEA has been the exclusive representative, as defined in PERB Regulation 32016(b), of an appropriate unit of the County's employees. A master memorandum of understanding (MOU) covering all

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<sup>1</sup>The Board does not adopt the ALJ's proposed decision.

<sup>2</sup>The MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references are to the Government Code.

<sup>3</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

employees represented by SCEA was in effect between the parties during the relevant period.<sup>4</sup>

The pertinent portion of the MOU provides that:

The parties to this Memorandum of Understanding have discussed the possibility that, with the uncertain economy and the uncertainty of County revenues, layoffs of Unit members may be necessary. This possibility was fully discussed and understood during the negotiations with the Unit representatives and the purpose of this provision is to alert the members of the Unit to this possibility. Any layoffs which may result shall be in accordance with County ordinances, rules, regulations, and policies concerning layoffs.  
(CP. Ex. 2, MOU, sec. 24.01.00; emphasis added.)

The dispute in this matter evolved from the adoption of a resolution by the Siskiyou County Board of Supervisors (Board of Supervisors) on June 15, 2004, to implement a reduction in force decision. The County decided to eliminate the position<sup>5</sup> of Probation Collections Officer, held by Gary Fitzgerald (Fitzgerald), a 16-year permanent full-time employee; and lay off the Museum Assistant Susan Bonnea (Bonnea), from her permanent 0.6 full-time-equivalent position.

The reduction in force decision was necessitated by financial difficulties experienced by the County. County Administrator, R. Howard Moody proposed to cut the 2004-2005 budgets for the Probation Department and the Juvenile Hall in the amounts of \$147,734 and \$48,978 respectively. Chief Probation Officer Adele Arnold (Arnold) was responsible for the entire County Probation Department/Juvenile Hall (Department), and managed the separate

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<sup>4</sup>The MOU, entitled "Memorandum of Understanding Between the County of Siskiyou and SCEA/AFSCME Master Agreement (Management, Professional, Miscellaneous, and Deputy Probation/Group Counselor Units)," covered the period of July 1, 2003 through June 30, 2004.

<sup>5</sup>"Position" means a specific office, employment, or job calling for the performance of certain tasks, duties, and responsibilities. (Resp. Ex. D, Siskiyou County Code (County Code), sec. 2-6.01(a).)

budgets of the Probation Department and the Juvenile Hall. The organization chart of the Department was admitted into evidence to show that Juvenile Hall, juvenile probation and adult probation were three distinct sub-units, under the management of one Chief Probation Officer.

Arnold testified that Juvenile Hall would not withstand any more budget cuts after the budget reductions in previous years. The operation of the Juvenile Hall was subject to specific requirements for staffing, food, care and shelter of the juveniles in the facility, established by Title 15 of the California Code of Regulations (CCR), entitled, "Crime Prevention and Corrections," and Title 24, CCR, named "California Building Standards Code." A reduction in the 2004-2005 Juvenile Hall budget would trigger a cut in the staff, which in turn would cause the Juvenile Hall to fall below the minimum requirements set forth above, and subject it to possible closure by the State of California (Department of Corrections).

Arnold further testified that after offering a work furlough program to employees, and allowing a probation officer to take a six-month unpaid leave of absence, she obtained the authorization of the then County Personnel Manager, Marylou Rogers to eliminate the position of Probation Collections Officer. Arnold referred to an analysis revealing that there were only eight to ten hours per month of work, and an additional four hours a month for payroll preparation in the Probation Collections Officer position. There is little evidence to demonstrate that this position provided either critical support to any of the probation officers or Juvenile Hall counselors, or justification for any funding or grants from outside agencies, such as the State Department of Social Services.

At the time Fitzgerald was laid off, there were approximately nine extra help employees<sup>6</sup> in the Juvenile Hall, including a probationary group counselor, a supervising deputy probation officer, and an administrative support staff member. Arnold testified that extra help employees were needed to supplement the full time staff of twelve (12) employees because the Juvenile Hall was open twenty-four (24) hours a day, seven days a week, and the counselors-to-juveniles ratio had to meet state-mandated standard. Arnold further stated that Juvenile Hall counselors, who provided critical services to the Juvenile Hall, were custodial officers with limited peace officer powers while being employed in the facility. They had to pass a background check, a physical agility and psychological test. After being hired, they were required to take arrest and seizure training pursuant to Penal Code section 832. The supervising deputy probation officer position, which was filled by former Chief Probation Officer, Pat Costello, was created to assist Arnold during the transition phase of a multi-million dollar construction project for a new Juvenile Hall facility. The administrative support staff member was employed primarily with the Probation Department, but when she had extra time, she would assist in the transition phase of the new Juvenile Hall construction project. There was no evidence showing that the Probation Collections Officer position required similar qualifications, job duties, scrutiny or training as Juvenile Hall counselors and extra help employees. The evidence also did not establish the existence of any extra help employees in the Museum at the time Bonnea was laid off.

Business agent for SCEA, Tom Dimitre (Dimitre) testified that during the negotiations for the successor MOU, the County and SCEA exchanged proposals. Dimitre stated that the

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<sup>6</sup>"Extra help" means those employees who are hired for seasonal work, nonrecurring work, vacation relief, or any other work of a short duration which does not require the duties of a permanent full or part-time employee. This class of employee shall not be provided holiday leave, sick leave, vacation leave, group insurance, or other types of benefits provided for permanent employees. (Resp. Ex. D, County Code, sec. 2-6.01(ag).)

County's proposal item number nine included language to indicate that layoffs were within classification. Dimitri did not recall exactly what the County negotiators had said, except that they "wanted layoffs to be by classification." He did not recall whether they had indicated that they wished to "change" or to "clarify" the language in the layoff provision.

Dimitri stated in his testimony that his understanding of the Siskiyou County Personnel Policies (Personnel Policies) was that they covered all County employees. However, if there was a contract, the contract would supersede. He nevertheless agreed that the last sentence in section 24.01.00 of the MOU stated that "any layoffs which may result shall be in accordance with County ordinances, rules, regulations, and policies concerning layoffs," specifically section 3.3 of the Personnel Policies.

Judicial notice is taken that the County Code "consists of all the regulatory, penal and administrative laws of general application of the County of Siskiyou, codified pursuant to the authority contained in Section 50022.2 of the Government Code." (County Code, sec. 1-1.02.) The County Code takes effect upon the effective date of the ordinance adopting the Code by reference. (County Code, sec. 1-1.03.) The County Code, Title 2, Chapter 6, set forth the "Definitions" in section 2-6.01, the provisions for "Reductions in force" in section 2-6.06.04; and "Notification of layoff and reemployment lists" in section 2-6.06.05.

The Personnel Policies, on the other hand, were written to provide information to the County employees. On July 2, 2002, one year before the effective date of the MOU, the County Board of Supervisors adopted the Personnel Policies. The Personnel Policy Taskforce, which included Dimitre as one of two SCEA representatives, compiled and edited the Personnel Policies. (Personnel Policies, sec. 1.1.) The Personnel Policies state that a reduction in force is accomplished in accordance with labor contracts (Personnel Policies, sec. 3.3.) In the event of a conflict between the Personnel Policies and any collective bargaining agreements or county

ordinance, "the terms and conditions of that contract, rule, or law shall prevail." (Personnel Policies, sec. 1.2.)

The County Code defines "layoffs" and "reduction in force" as follows:

'Layoff shall mean the termination of the services of an employee for nondisciplinary reasons but rather because of the lack of work or funds or for other reasons not related to employee job performance.  
(Resp. Ex. D, County Code, sec. 2-6.01 (an).)

'Reduction in force' shall mean an involuntary separation from service due to a shortage of funds or work, organizational changes, or other reasons of business necessity, not involving performance or conduct, which require a reduction in staff.  
(Resp. Ex. D, County Code, sec. 2-6.01 (be).)

The Personnel Policies offer the following definition for "layoffs."

Layoff is termination of an employee by the County for lack of work, lack of funds, or other changes that have taken place. A reduction in force is accomplished in accordance with labor contracts.  
(CP. Ex. 2, Personnel Policies, sec. 3.3.)

The County policy on "reduction in force" is based on "departments," as stated below:

(a) Whenever it is necessary, due to the lack of funds or the Board otherwise determines that a reduction or elimination of services performed by any or all departments is needed, employees within the department, including those on an approved leave of absence, may be laid off, transferred, or demoted as set forth in this section. ...  
(County Code, sec. 2-6.06.04(a), emphasis added.)

The County policy on "reduction in force" also infers that layoffs can be accomplished by the elimination of "positions," stated as follows:

Employees occupying positions designated for abolishment shall have the right to exercise their available options to transfer, demote, or be laid off based on seniority, as provided in this section, with the most senior employees having greater potential right of continued employment than those of lesser seniority.

(County Code, sec. 2-6.06.04(c), emphasis added.)

The County layoff policy is based on the seniority of permanent employees within the "affected class." "Seniority rights" are defined more fully as follows:

Seniority right shall be based on all continuous County employment in ~~a permanent position<sup>[7]</sup> within the affected class~~ without a break due to separation, subject to the provisions contained in this section; rights to transfer and/or demote shall be within the employees' department only.

(County Code, sec. 2-6.06.04(d), emphasis added.)

The County Personnel Officer is authorized to establish a "seniority list" by "classification" and "department," explained as follows:

The Personnel Officer shall establish ~~a seniority list by classification for each County department~~. Each employee appointed to a permanent position shall receive a seniority credit for each calendar day of permanent employment, with [certain] exceptions....

(County Code, sec. 2-6.06.04(e), emphasis added.)

The County has devised a sequence of three preferences to break a tie in seniority, based on the class series in the affected department, stated more completely as follows:

When two (2) or more employees have the same seniority, the tie shall be broken and preference given in the following sequence:

- (1) Employees with the greatest seniority in the class series in the department in which the layoff is being made;
- (2) Total County service; and
- (3) The recommendation of the department head.

(County Code, sec. 2-6.06.04(f), emphasis added.)

Under the County policy on "reduction in force," employees subject to layoff may choose to transfer or demote in lieu of layoff. If found to be eligible, the employees shall be

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<sup>7</sup>"Permanent position" and "Permanent status" mean a budgeted position as defined by a specific classification and excluding extra help positions. (County Code, sec. 2-6.01(as) and (at).)

demoted or transferred to their prior permanent service in a designated "class in the same department."<sup>8</sup>

Much of the dispute in this matter is focused on the interpretation and application of the "order of layoff" as stated or implied in section 24.02.00 of the MOU:

Permanent part-time employees working less than twenty (20) hours per week shall be first to be laid off following layoff of all 1) emergency, 2) student intern, 3) extra help and 4) provisional employees. Permanent part-time employees, regardless of the number of hours worked, shall accrue seniority pursuant to Section 2-6.06.04E.4 (hours worked converted to yearly equivalent). (Emphasis added.)

The County Code provides a more complete picture of the disputed "order of separation." It provides that if reductions in force are necessary, employees who work less than twenty (20) hours per week, and who are "within the class within their department having the least continuous equivalent County service shall be separated first." It states as follows:

If reduction in force separations are necessary, employees with a normal workweek of less than twenty (20) hours within the class within their department having the least continuous equivalent County service shall be separated first. The order of separation shall be by employee status categories and shall be as follows:

- (1) Emergency;
- (2) Student interim;
- (3) Extra help;

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<sup>8</sup>Employees subject to layoff may be eligible to be demoted or may request transfer subject to the following provisions:

- (1) An employee who has prior permanent service in a lower level class in the same department may demote to that lower level class....
  - (2) An employee subject to layoff may submit a written request to be considered for transfer to any vacant position in a class for which the employee meets the minimum qualifications as provided in the class specification, and as determined by the Personnel Officer, provided such class has an equivalent or lower salary range.
- (County Code, sec. 2-6.06.04(g), emphasis added.)

- (4) Provisional;
- (5) Probationary; and
- (6) Permanent,

(County Code, sec. 2-6.06.04(b), emphasis added.)

The Personnel Policies provide for a partially similar "order of termination," subject to the employee's performance of required duties in "the job," and the employee's seniority in "the classification," stated in the following:

The County shall give equal consideration to an employee's ability and performance of the duties required in the job and to an employee's length of continuous service with the County in the classification. In applying this provision, where qualifications, experience, and performance are equal, seniority shall govern. Every effort will be made to transfer an employee to other departments when a position is open for which the employee is qualified.

The order of termination for layoff shall be by employee status<sup>9</sup> categories and shall be as follows:

1. Emergency employees
2. Student interns
3. Extra help employees
4. Provisional employees
5. Probationary employees
6. Permanent part time employees working less than 20 hours a week, based on seniority.
7. Permanent part time employees working more than 20 hours a week, based on seniority.
8. Permanent full time employees based on seniority.

(CP. Ex. 2, Personnel Policies, sec. 3.3, emphasis added .)

## DISCUSSION

The issue in the present case is whether or not the County made a unilateral change in its layoff policy regarding the elimination of the position of Probation Collections Officer, held by Fitzgerald, a 16-year permanent full-time employee; and the layoff of the Museum

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<sup>9</sup>“Employee status' shall mean a designation based on the most recent of the following types of appointments: probationary, permanent, extra help, emergency, provisional, or student intern." (Resp. Ex. D, County Code, sec. 2-6.01(af).)

Assistant Bonneva from her permanent 0.6 full-time-equivalent position, and thereby failed to meet and negotiate in good faith.

In determining whether a party has violated Section 3505 and PERB Regulation 32603(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.)<sup>10</sup> Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813 [207 Cal.Rptr. 876]; Grant Joint Union High School District (1982) PERB Decision No. 196.)

In its exceptions, SCEA argues that the ALJ erroneously found against SCEA for failing to establish any unilateral change due to ambiguity in the parties' MOU and the Personnel Policies. SCEA contends that the pertinent language in the MOU and the Personnel Policies is unambiguous with regard to the proper order of layoffs. SCEA also contends that the ALJ erred in ignoring Dimitre's testimony that the County's proposal made during the negotiation process for the successor MOU demonstrated the County's desire to change the existing MOU language. The County's proposal to provide for layoffs within classification,

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<sup>10</sup>When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

SCEA alleges, presented clear evidence of the employer's understanding of the status quo of the MOU, which is, to lay off on a county-wide or department-wide basis.

The County responds to SCEA's exceptions by alleging that SCEA failed to sustain its burden of proving by a preponderance of the evidence that the County unilaterally changed its layoff policy. Specifically, SCEA failed to prove that the MOU and the Personnel Policies required the County to lay off all extra-help employees county-wide, regardless of classification, before it could lay off two permanent employees who held positions that the County no longer needed. The County alleges that SCEA's interpretation requires reading the layoff provision in section 24.02 of the MOU out of context and in isolation. The County agrees with the ALJ's conclusion that, through its proposal to add "layoff by classification" language to the successor MOU, "the County sought nothing more than to 'clarify' the language regarding the order of layoffs."

SCEA and the County entered into a one-year MOU for the period ending June 30, 2004. During the negotiations for the MOU, the County and SCEA fully discussed and understood the possibility of layoffs due to economic uncertainty. In their agreement on "layoffs," the County and SCEA agreed that layoffs should be in conformity with County ordinances, rules, regulations, and policies concerning layoff. (MOU, sec. 24.01.00.) The County Code and the Personnel Policies were in effect for the duration of the MOU.

SCEA argues that section 24.02.00 of the MOU requires layoffs to be based on countywide seniority, in that "permanent part-time employees working less than twenty (20) hours per week shall be first to be laid off following layoff of all: 1) emergency, 2) student intern, 3) extra help and 4) provisional employees." However, the word "all" in that section does not require this result.

A reasonable inference can be drawn from the language in MOU section 24.01.00 and Personnel Policies section 3.3, that the parties intended to conform to all three documents - the MOU, the Personnel Policies and the County Code - in implementing layoffs. Moreover, as compared to the County Code and the Personnel Policies, the MOU contained a relatively brief segment on "layoffs," consisting of only five sections and two sub-sections. MOU section 24.01.00 states that "any layoff which may result shall be in accordance with County ordinances, rules, regulations and policies concerning layoffs." It can reasonably be inferred that the parties intended to defer to the more specific terms and provisions of the County Code and the Personnel Policies on "layoffs" and "reductions in force" when similar subjects are not included in the MOU.

The definitions of "layoff and "reduction in force" are similar under both the County Code and the Personnel Policies. "Layoff is defined as the termination of an employee's services due to the lack of work or funds, or for other reasons unrelated to employee job performance or disciplinary reasons. (County Code, sec. 2-6.01.(an).) Under the Personnel Policies, section 3.3, "layoff is the termination of an employee by the County for lack of work, lack of funds, or other changes that have occurred. Both section 2-6.01(bc) of the County Code, and section 3.3 of the Personnel Policies contain identical definitions for "reduction in force," which are similar to those for "layoffs." The MOU contains no such equivalent definitions.

The MOU, County Code and Personnel Policies are silent as to whether layoffs should occur by position, class, department, or the entire county. However, the County Code and Personnel Policies both have provisions that are instructive. While there are mentions of abolishment of positions, and layoffs or transfers and demotions in lieu of layoffs according to

class and department, there is no mention that reductions in force shall be implemented on a countywide basis.

In addressing reductions in force, the County Code states that whenever the Board of Supervisors has determined to reduce or eliminate services performed by "any or all departments" due to lack of funds, "employees within the department" may be laid off. (County Code, sec. 2-6.06.04(a).) This provision indicates that layoffs may be targeted by department.

The County Code further provides that employees occupying "positions designated for abolishment" are entitled to transfer, demote or be laid off based on seniority. (County Code, sec. 2-6.06.04(c).) This phrase signifies that layoffs can be accomplished by the elimination of "positions," which are often grouped by classification.

As stated in the County Code, layoffs are based on the seniority of permanent employees. "Seniority right" is based on all continuous County employment in a permanent position within "the affected class" without a break due to separation.<sup>11</sup> (County Code, sec. 2-6.06.04(d).) The Personnel Officer establishes a "seniority list by classification for each County Department."<sup>12</sup> (County Code, sec. 2-6.06.04(e).) When two or more employees have the same seniority, the tie is broken based on three sequential preferences, the first of which is "employees with the greatest seniority in the class series in the department in which the layoff is being made." (County Code, sec. 2-6.06.04(f)(1).) The other two preferences are total County service and the department head's recommendation. (County Code,

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<sup>11</sup>"Separation" means "a break in service resulting from a resignation, termination, retirement, dismissal, reduction in force, or death as provided in Section 2-6.06." (Resp. Ex. D, County Code, sec 2-6.01(bi).)

<sup>12</sup>Each employee appointed to a permanent position shall receive a seniority credit for each calendar day of permanent employment, subject to certain exceptions.

sec. 2-6.06.04(f)(2) and (3).) Employees subject to layoff may choose to be demoted or transferred in lieu of layoff. If determined to be eligible, they will be demoted or transferred according to their prior permanent service in a designated "class in the same department." (County Code, sec. 2-6.06.04(g).) All these provisions imply that layoffs based on seniority, or in lieu of layoffs by means of demotion or transfer, should be based on "class" and "department."

The County Code provides specifically that if reductions in force are necessary, employees who work a normal workweek of less than twenty (20) hours, and who are "within the class within their department," having the least continuous equivalent County service, shall be separated first. The order of separation shall be by employee status categories<sup>13</sup> and shall be as follows:

1. Emergency;
2. Student interim;
3. Extra help;
4. Provisional;
5. Probationary; and
6. Permanent.

(County Code, sec. 2-6.06.04(b).) This provision pertains only to employees who work less than twenty (20) hours per week, and who are "within the class within their department."

The Personnel Policies provide for a partially similar order of layoffs, subject to the employee's performance of required duties in "the job," and the employee's seniority in "the classification." In making layoff decisions, the Personnel Policies indicate that the County shall give equal consideration to an employee's ability and performance of the duties required "in the job" and to an employee's length of continuous service with the County "in the

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<sup>13</sup>"Employee status" means a designation based on the most recent of the following types of appointments: probationary, permanent, extra help, emergency, provisional, or student intern. (County Code, sec. 2-6.01(af).)

classification." Seniority governs where qualifications, experience, and performance are equal. (Personnel Policies, sec. 3.3.) The order of layoff shall be by employee status categories and shall be as follows:

1. Emergency employees
  2. Student interns
  3. Extra help employees
  4. Provisional employees
  5. Probationary employees
  6. Permanent part time employees working less than 20 hours a week, based on seniority.
  7. Permanent part time employees working more than 20 hours a week, based on seniority.
  8. Permanent full time employees based on seniority.
- (Personnel Policies, sec. 3.3.)

The Personnel Policies unequivocally state that the County should give equal consideration to the employee's performance of the duties "in the job," and seniority "in the classification." By combining the order of layoff for both non-permanent and permanent employees on the same list<sup>14</sup>, it can be argued that non-permanent employees should be laid off before the permanent employees, regardless of class or department. However, according to the Personnel Policies, the County Code shall prevail if there is any conflict between the County Code and the Personnel Policies. (Personnel Policies, sec. 1.2.) As the County Code specifically provides, if reductions in force are necessary, employees who work less than twenty (20) hours per week, and who are "within the class within their department," having the least continuous equivalent County service, shall be separated first. Harmonizing the language of section 2-6.06.04(b) of the County Code and section 3.3 of the Personnel Policies will mean that the County's layoffs decision should be implemented pursuant to the following discussion.

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<sup>14</sup>Employees listed in the first five categories do not hold permanent positions, but those listed in the last three categories do.

Under County Code section 2-6.06.04(b), only those extra help employees who are "within the class within their department" shall be separated first. It is undisputed that the organization chart of the Department shows that Juvenile Hall, juvenile probation and adult probation are three distinct sub-units, under the management of one Chief Probation Officer. Even assuming for the purpose of discussion that these positions are all within the same Department, there is no evidence to show that they belonged to the same sub-unit or the same class. It is also undisputed that the positions of the approximately nine extra help employees are primarily within Juvenile Hall, and that the Probation Collections Officer position belongs to the Probation Department, which is a sub-unit separate from the Juvenile Hall. These positions are therefore not within the same class within the employee's department.

Additionally, pursuant to Personnel Policies section 3.3, the County should implement layoffs based on seniority if the employee's qualifications, experience, and performance of the required duties "in the job" are equal. In the present case, the evidence demonstrates that the Probation Collections Officer, being in a class of his own, did not have similar qualifications and experience, and did not perform the same required duties as any of the extra help employees.

We find that the applicable provisions in the Personnel Policies and the County Code are unambiguous and that they do not support SCEA's contention that the MOU provides for layoffs on a countywide basis. Thus, SCEA has not sustained its burden of proof to show that all extra-help employees in Juvenile Hall, who are within a non-affected class, should be laid off before Fitzgerald, a permanent employee in the affected class. Since the preponderance of the evidence shows that the County did not breach or unilaterally change the "layoff provisions in the MOU, which, under section 24.01.00, must follow the Personnel Policies or the County Code. SCEA's first exception is therefore without merit.

In its second exception, SCEA contends that the ALJ erred in ignoring Dimitre's testimony concerning the County's proposal, made during the negotiation session for the successor MOU, to add language to provide for "layoff by classification." SCEA argues that such evidence demonstrated the County's understanding of the status quo of the MOU, which is, layoff should be implemented by county or department. We see no reason not to adopt the ALJ's credibility and weight determinations regarding Dimitre's testimony.<sup>15</sup> The Board has determined that the provisions of the MOU, County Code, and Personnel Policies demonstrate that the layoffs in this case did not constitute a change in past practice.

Accordingly, the Board concludes that SCEA has not sustained its burden of proof to show that the County made any unilateral change to the MOU when it eliminated the position of Probation Collections Officer, held by Fitzgerald, and laid off Museum Assistant Bonnea from her permanent 0.6 full-time-equivalent position. Having decided that the preponderance of evidence does not support the finding of a breach or unilateral change of the MOU, the Board finds it unnecessary to address the issues of scope of representation, and the County's duty to meet and confer. Thus, the Board dismisses the complaint.

#### ORDER

The unfair practice charge and complaint in Case No. SA-CE-255-M are hereby  
DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

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<sup>15</sup>As stated earlier, Dimitre testified that he had no recollection of whether the County had indicated that they wished to "change" or to "clarify" the language in the layoff provision.